

COMMISSION ON STATE MANDATES

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August 15, 2000

Via Facsimile and First Class Mail

Mr. Daniel G. Stone, Deputy Attorney General
Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

RE: Department of Finance's July 20, 2000 Request for Statement of Decision Regarding
Total Offset Defense to Claims
CSM 3986, *Special Education*
Statutes of 1977, Chapter 1247
Statutes of 1980, Chapter 797, et al.

Dear Mr. Stone:

On July 20, 2000, the Department of Finance requested that the Commission, pursuant to Title 2, California Code of Regulations, section 1188.2, subdivision (a), prepare and adopt a written Statement of Decision reflecting the Commission's June 5, 2000 finding related to the Department of Finance's "total offset" argument. In essence, it is the Department's position that since the Commission heard and decided a legal issue, whether Government Code section 17556, subdivision (e), applies to the *Special Education* Test Claim, the Commission must adopt a Statement of Decision with specific findings regarding the Department's "total offset" argument.

On June 5, 2000, in accordance with Title 2, California Code of Regulations, section 1183.12, subdivision (c), the Commission held an Article 8 "informational hearing" and adopted the *Special Education* Parameters and Guidelines (Ps & Gs). Section 1183.12, subdivision (d), requires the Commission, within ten days after adoption of the Ps & Gs, to transmit a copy of the adopted Ps & Gs to the State Controller's Office, the claimant, and interested parties on the mailing list. There is nothing in state law or in the Commission's regulations that requires the Commission to adopt a formal Statement of Decision reflecting its adoption of Ps & Gs. In contrast, section 1188.2 of the Commission's regulations, which you cite, requires that any Commission decision made pursuant to an Article 7 "evidentiary hearing" "shall be in writing" and "shall include a statement of reasons for the decision, findings, and conclusions." This requirement does not apply to Article 8 "informational hearings" under which the Commission heard the *Special Education* Ps & Gs. Thus, the Commission, in accordance with its regulations, as well as its practice, did not and will not issue a Statement of Decision on its adoption of the *Special Education* Ps & Gs.

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In your letter you state that “the absence of a written decision presents a prejudicial obstacle to any party, including the Department, that may wish to seek judicial review of the Commission’s ruling on the section 17556(e) ‘total offset’ bar. . . .” You further cited Government Code section 17559 which provides that:

“A claimant or the state may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure *to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence. . . .*” (Emphasis added.)

You conclude that the absence of a decision “delays and impairs the Department’s ability to obtain judicial review of this critical issue. . . .” In response to your concern regarding the Department’s ability to obtain judicial review of the Department’s “total offset” argument, I will send a certified copy of the administrative record for the *Special Education* Ps & Gs under separate cover, which may be used by a court to review the Commission’s actions regarding the Department’s “total offset” argument.

Under Title 2, California Code of Regulations, section 1181, subdivision (c), “any party in interest may appeal to the Commission for review of the actions and decisions of the executive director.”

If you have any questions please call David E. Scribner, Staff Counsel at (916) 323-8221.

Sincerely,

PAULA HIGASHI
Executive Director

C.: Mailing List

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